THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITITION Nos. 26424, 26963, 26559, 26986, 27007 OF 2006 AND 56, 135, 136, 318, 6550 AND 1648 OF 2007

Dated 14th August, 2007

W.P.No. 26424 of 2006

Between:

Chandana Meenakshi and others.

…Petitioners

And

The Government of A.P., represented
by its Secretary, Revenue & Land Acquisition
Department, Secretariat, Hyderabad and
others.

…Respondents.

COMMON ORDER:

In view of the common questions of law and facts involved in these cases, they are disposed of by this common order.

In all these writ petitions, the petitioners have questioned the validity of the notification issued under Section 4(1) of the Land Acquisition Act, 1894 by the second respondent in proceedings Ref.G4/2113/06, dated 18.11.2006 for acquisition of various extents of lands owned by them and situated at Velugubanda village, Rajanagaram Mandal of East Godavari District for the public purpose of establishment of Adi Kavi Nannayya University.

For the sake of convenience, I refer to the fact-situation and the parties as arrayed in Writ Petition No.26424 of 2006.

After taking a decision to establish a University at Rajahmundry, East Godavari District in the name of Adi Kavi Nannayya, Officer on Special Duty was posted to work out the land requirement plan etc. The Special Officer has submitted the land plan and schedules to the Sub-Collector, Rajahmundry for acquisition of land to an extent of Ac.305.78 cents in various survey numbers of Velugubanda village of Rajanagaram Mandal for construction of Adi Kavi Nannayya University. Accordingly, the Sub-Collector, Rajahmundry submitted the proposals for draft notification under Section 4(1) of the Land Acquisition Act to the District Collector, East Godavari District, Kakinada vide his letter dated 16.8.2006. In turn, the District Collector has submitted the same to the Government for approval in the month of September, 2006. The Government after placing the proposals before the Screening Committee of Land Acquisition, approved the proposals for draft notification for acquisition of land to an extent of Ac.293.55 cents. Accordingly, notification was published under Section 4(1) of

the Land Acquisition Act, 1894 in the Andhra Pradesh Gazette, Part-I, Extraordinary, dated 18.11.2006. Though a total extent of Ac.293.55 cents was notified for acquisition, but the petitioners who own various extents of land totally admeasuring to Ac.183.54 cents have approached this court and filed this batch of cases.

Though the notification is stated to have been issued by the District Collector, East Godavari, but the same has been signed by the Principal Secretary to the Government, High Education Department, Government of Andhra Pradesh. In the said notification, the Sub-Collector, Rajahmundry and his subordinates were conferred with the powers of the Collector under the provisions of Section 4(2) of the Land Acquisition Act and the Sub-Collector was also authorized to enquire under Section 5-A of the Act. The said acquisition proceedings are questioned by the petitioners herein on the following grounds:

(1) There is no delegation of functions by the State Government to the District Collector by issuance of notification contemplated under Section 3-A of the Land Acquisition Act, 1894, introduced by A.P.Amendment Act 22 of 1976, and, thereby, conferring no power on the District Collector to appoint the Sub-Collector, Rajahmundry to perform the functions of the Collector under Section 3© of the Act, and, as such, the Sub-Collector has no authority to perform the functions under Section 4(2) and 5-A of the Land Acquisition Act and the notification is not valid and legal.

(2) The notification under Section 4(1) of the Land Acquisition Act is signed by the Principal Secretary, Higher Education Department, Government of Andhra Pradesh stating it to have been issued by the District Collector, who lacks competency and jurisdiction for the reasons stated in ground No.1, and, therefore, the said notification is not valid.

(3) The notification under Section 4(1) of the Land Acquisition violates the provisions of Section 3(1) of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006, and is, therefore, liable to be set aside, as all the lands notified are registered as agricultural lands and no prior permission of the competent authority has been obtained for conversion of the said lands to be put to non-agricultural purposes, since the purpose of very acquisition is to house Adi Kavi Nannayya University, which is a non-agricultural purpose.

Counter affidavit has been filed on behalf of the respondents 3 and 4, wherein, it is categorically stated that in view of the decision of the Government to establish Adi Kavi Nannayya University in Rajahmundry, the land plan was prepared and an extent of Ac.305.78 cents of land in R.S.No.353 and others of Velugubanda village of Rajanagaram Mandal was proposed for acquisition and in view of the approval of the draft notification by the Government, the draft notification was published in the Andhra Pradesh Gazette, Part-I, Extraordinary on 18.11.2006. It is stated that apart from the publication in the gazette, the notification was also published in the daily newspapers, namely, Vartha Daily newspaper on 19.11.2006 and Hindu Daily Newspaper on 20.11.2006 and the substance of the notification in the locality on 22.11.2006. When the enquiry was in progress under Section 5-A of the Act, the petitioners have approached this Court and obtained interim orders. It is further stated that the draft notification was issued by the District Collector under Section 4(1) of the Land Acquisition Act 18.11.2006 and the same was approved by the Principal Secretary, Higher Education Department. Though the gazette notification reads that the 3rd respondent herein has

appointed the 4th respondent-Sub-Collector, Rajahmundry to perform the functions of the Collector under Section 5-A of the Act, but the same is a printing error and in view of the approval of the notification by Principal Secretary, Higher Education Department, the delegation by the 3rd respondent to 4th respondent shall be deemed to have been ratified by the State Government. The said delegation will be in compliance with Section 3© of the Act though it has been done by the 3rd respondent in favour of the 4th respondent and the 4th respondent is yet to submit the enquiry report. With regard to the allegation of the petitioners that no prior permission was obtained for change of land use, it is stated that such a permission at this stage does not arise as the land continues to be an agricultural land till it vests with the Government after acquisition and possession and when the Government desires to utilize the same for non-agricultural purpose, necessary action would be taken for such conversion, if necessary. Pleading that the respondents shave followed all the guidelines issued by the Government for acquisition of lands, it is stated that there is no legality, irrationality and procedural impropriety as alleged by the petitioners and prayed for dismissal of the writ petition.

Heard learned counsel for the petitioners, M/s. Ch.Dhanamjaya, K.Venkatesh and others and the learned Advocate-General for the respondents.

It is contended by the learned counsel for the petitioners, Shri Ch.Dhanamjaya, that the notification issued under Section 4(1) of the Land Acquisition Act, 1894 is not valid and is illegal as the same is issued by the Collector, who has no jurisdiction in absence of any delegation of such power to him by the Government, and, so also the appointment of Sub-Collector, Rajahmundry to perform the functions under Sections 4(2) and 3© of the Act. He further submitted that the petitioners also purchased the land under acquisition for the purpose of establishing educational institutions,

and, as such, they cannot be deprived of their land for the purpose of establishing a University.

It is contended by Shri K.Venkatesh, learned counsel for some of the petitioners that no prior permission was obtained by the respondents under Section 3(1) of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 for conversion of the land from agricultural to non-agricultural use and in that view of the matter, the acquisition is illegal as it runs contrary to the provisions of the A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006.

Other learned counsel appearing for the petitioners adopted the arguments advanced by M/s. Ch.Dhanamjaya and K.Venkatesh.

On the other hand, it is submitted by the learned Advocate-General appearing for the respondents that though there was some defect in the notification which was issued earlier, but, as the same was issued and signed by the Principal Secretary and published in the A.P.Gazette, it is only a notification issued by the State Government and is a valid notification. It is further submitted that in view of some errors in the notification published on 18.11.2006 in the A.P.Gazette, Part-I, Extraordinary, respondents have also issued errata, which was published in the East Godavari District Gazette, Extraordinary, dated 14.7.2007, and, therefore, any errors in the notification should be deemed to have been corrected from the date of notification issued on 18.11.2006 and in view of the errata, it cannot be said that it is a notification issued by the District Collector. It is stated that the notification issued under Section 4(1) of the Act is a preliminary notification and the necessity of obtaining prior permission under the provisions of the A.P. Agricultural Land (Conversion For Non-Agricultural Purposes) Act, 2006 will not arise at this stage, as the permission contemplated under the said Act is required to be obtained only before using the agricultural land for non-agricultural purpose and as such, non-obtaining such a permission from the competent authority is not a ground at all at this

stage to challenge the validity of the notification issued under the Land Acquisition Act, 1894.

Before I proceed further, it is relevant to reproduce the relevant portion of the notification issued under Section 4(1) of the Land Acquisition Act, which was published in the Andhra Pradesh Gazette, Part-I, Extraordinary on 18.11.2006:

> "FORM-2D
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> FORM OF NOTIFICATION TO BE ISSUED UNDER SECTION 4 OF L.A. ACT I OF 1894 AS AMENDED BY THE ACT XXXVIII OF 1923.
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> -oOo-
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> Whereas it appears to the Collector, East Godavari, the lands specified in the schedule below and situated in Velugubanda (V) in Rajanagaram Mandal in East Godavari District is needed , District Collector, East Godavari, Kakinada hereby authorizes the Sub Collector, Rajahmundry and his staff and workmen to exercise the powers conferred by Section 4(2) of the Act under Sub Section 4 of the Act.
>
> Under Section 3© of the same Act the Collector, East Godavari District, Kakinada appoints the Sub-Collector, Rajahmundry to perform the functions of a Collector under Section 5-A of the Act.
>
> Xxxxxx xxxxx xxx
>
> (Sd/-)ASUTOSH MISHRA
>
> Principal Secretary to Government.
> Higher Education Department, A.P.,
>
> Hyderabad."

From the above notification, it is evident that the same is issued only in the name of the Collector, East Godavari District. Notification also expressly states that the District Collector authorized the Sub-Collector, Rajahmundry to exercise the powers conferred by Section 4(2) of the Act and also to perform the functions under Section 5-A of the Act. It is contended by the learned Advocate-General that though the notification was stated to have been issued by the Collector, East Godavari District, but it was issued only on behalf of the Government of Andhra Pradesh. There is a standard format for issuance of notification under Section 4(1) of the Land Acquisition Act and if it is a notification issued by the State Government, it has to be issued as it appears to the Government of Andhra Pradesh. But, having issued the notification on behalf of the District Collector and by expressly stating that the District Collector appointed the Sub-Collector, Rajahmundry as an Officer to perform

the functions under Section 4(2) and 5-A of the Act, it is not permissible for the respondents to plead that as the notification was issued under the signature of the Principal Secretary to Government, it shall be deemed to have been issued by the Government. Under Section 4(1) of the Land Acquisition Act, as applicable to the State of Andhra Pradesh, the notification has to be published in the Official Gazette and in two daily newspapers circulated in the locality of which at least one shall be in the regional language, and the District Collector shall within forty days from the date of publication of such notification cause public notice of the substance of such notification at convenient place in the locality concerned. A copy of the errata is produced, which was dated 14.7.2007. It is to be noted that the notification was issued on 18.11.2006 and even as per the stand of the respondents in the counter affidavit, the substance was published in the locality on 22.11.2006. Therefore, the errata published on 14.7.2007 in no way validates the notification which was published on 18.11.2006 and the substance of the said notification, which was given in the locality on 22.11.2006 as, if the date of errata is taken into consideration, the same will run contrary to Section 4(1) of the Act. Moreover, the respondents cannot seek rectification of the fundamental defect in the notification under the guise of publication of errata on 14.7.2007 so as to accept their plea that by publication of errata, the notification stands rectified from its original date. It is not open for the respondents to substitute the whole notification under the guise of errata. Only airthmatical and clerical errors in the notification, which is otherwise valid, can be cured by way of errata and an invalid notification cannot be made valid by issuing errata.

Though, originally, under the provisions of the Land Acquisition Act, 1894, the Government alone is the competent authority for issuing notification under Section 4(1) of the Land Acquisition Act, but, in view of the A.P.State Amendment, in the State of Andhra Pradesh, as a delegated authority, District Collector

is also authorized to notify the land for purposes for which such delegation is conferred on the District Collector. But, in the instant case, no power has been delegated to the District Collector under Section 3-A of the Act and the District Collector has not exercised as the delegated authority. The notification was issued in the name of the District Collector but was signed by the Principal Secretary to Government, and even in the absence of any order, the 4th respondent is also empowered to discharge the functions of Land Acquisition Officer under Section 4(2) and 5-A of the Land Acquisition Act.

In that view of the matter, as the very notification is defective and runs contrary to the provisions of Section 4(1) of the Land Acquisition Act, the same is not valid and legal.

The next ground urged by the learned counsel for the petitioners is that no prior permission has been obtained by the respondents from the competent authority under the provisions of t h e Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006, and, as such the acquisition proceedings are contrary to the provisions of the said Act.

The usage of agricultural land for non-agricultural purposes was earlier governed by the provisions of the A.P.Non-Agricultural Lands Assessment Act, 1963 which provided for levy of assessment on lands used for non-agricultural purposes. But, however, the said Act was repealed and the new Act (Act No.3 of 2006) is brought into force and the prime object of the Act is to regulate the conversion of Agricultural Land to Non-Agricultural purposes and for matters connected therewith by collecting conversion charges as one time measure. As per Section 3(1) of the A.P.Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006, no agricultural land in the State shall be put to non-agricultural purposes, without the prior permission of the competent authority. Under sub-section (2) of Section 3 of the said Act, an application for conversion of the agricultural land for non-agricultural purposes

shall be made before the competent authority in the prescribed form along with the conversion fee as specified under Section 4. Section 4 of the Act prescribes conversion fee at the rate of 10% of the basic value of the land for conversion of the land use. In this case, the stage for obtaining permission for conversion of the land use has not come at all and the question of usage of the land for non-agricultural purposes arises only after attainment of finality to the acquisition proceedings and vesting of the land with the Government. Notification under Section 4(1) of the Land Acquisition Act is only preliminary one authorizing the officers of the Government to enter upon and survey and take levels of any land in the locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adaptable for such purpose, to set out the boundaries of the land proposed to be taken etc. The land vests with the Government only after the Collector makes his award under Section 11 of the Land Acquisition Act and takes possession of the land, or, in cases of urgency, when the Collectors takes possession of the land under Section 17 of the Act. Therefore, the question of obtaining prior permission from the competent authority for conversion of agricultural land into non-agricultural purposes does not arise at this stage even before vesting of the land in the government, and as such, the contention of the learned counsel for the petitioners that since the acquisition is for the purpose of establishment of a University and no permission is taken from the competent authority, the notification issued under Section 4(1) of the Land Acquisition Act is not valid, is liable to be rejected.

The further ground urged by the learned counsel for the petitioners is that the petitioners themselves purchased the land under acquisition for the purpose of establishment of educational institutions and since the acquisition is also for a similar purpose, their land cannot be acquired. But, when the Government in exercise of its power of eminent domain initiates proceedings for

acquisition for a larger public interest, the petitioners' contention that since they purchased the land for similar purposes, their land cannot be acquired, cannot be acceded to.

In the result, in view of the finding that the notification under Section 4(1) of the Land Acquisition Act, 1894 is not valid and legal for the reasons stated supra, the writ petitions are allowed and the notification under Section 4(1) of the Land Acquisition Act, 1894 published on 18.11.2006 is set aside to the extent of the lands of the petitioners in this batch of cases. However, this will not preclude the respondents from notifying the lands afresh strictly as per the provisions of the Land Acquisition Act, 1894, if they so choose. No costs.

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14--8—2007 **R.SUBHASH REDDY, J.**

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